

State of California
Department of Resources Recycling and Recovery

Public Hearing to Consider
The Completion of Compliance Order IWMA BR07-03
For the City of Downey, County of Los Angeles

May 15, 2012
10:00 am
Byron Sher Auditorium

I. ISSUE

The City of Downey (City) has reported to the Department of Resources Recycling and Recovery (CalRecycle) its successful completion of all the requirements stipulated in Compliance Order IWMA BR07-03 (Compliance Order; Attachment 1). The City presented its progress through its 2010 annual report and its quarterly reports required by the Compliance Order. In addition, CalRecycle staff has conducted several site visits to the City to verify program implementation. Staff's most recent site visit was in February 2012 (see Attachment 2).

Public Resources Code 41850 and the Compliance Order require CalRecycle to hold a public hearing to determine if the City has complied with all of the conditions and requirements of the Compliance Order.

II. ITEM HISTORY

On February 13, 2007, the California Integrated Waste Management Board (predecessor of the Department of Resources Recycling and Recovery [CalRecycle]) issued Compliance Order IWMA BR07-03 to the City of Downey. The issuance was based on the City's failure to adequately implement its diversion programs.

On June 17, 2010, CalRecycle's Deputy Director, Waste Permitting, Compliance, and Mitigation Division, granted the City's request to extend the deadline for full Local Assistance Plan implementation to September 30, 2010. This approval also extended the City's monitoring period through September 30, 2011.

III. OPTIONS FOR CONSIDERATION

1. Find that the City of Downey has fully implemented the requirements of Compliance Order IWMA BR07-03.
2. Direct staff to modify Compliance Order IWMA BR07-03 to reflect additional

- programs that the City of Downey would need to implement. Direct staff to work with the City to extend the overall timeframe of the Compliance Order.
3. Find that the City of Downey is non-compliant for failing to meet the requirements of the Compliance Order. Direct staff to schedule a public hearing to consider fining the City for failing to comply with the Compliance Order.

IV. STAFF RECOMMENDATION

Staff recommends Option 1: Find that the City of Downey has fully implemented the requirements of Compliance Order IWMA BR07-03.

Approving the completion of the City's Compliance Order will commence the transfer of the City from the Jurisdiction and Product Compliance Unit back to the Local Assistance and Market Development Branch. The Local Assistance and Market Development Branch will review the City in the next two-year cycle, which commences with the submission of the 2013 annual report, and will continue to monitor the City's program implementation. This will provide the Department with the ability to monitor the City's overall efforts of continued program implementation. This does not impact the Department's ability to exercise its option to review the City's efforts at any time, should an independent compliance review by the Jurisdiction and Product Compliance Unit be warranted (PRC Section 41825(b)).

V. ANALYSIS

On February 13, 2007, CalRecycle issued Compliance Order IWMA BR07-03 to the City of Downey due to the City's failure to adequately implement its diversion programs.

The Compliance Order [Section 3.1] required the City to submit a Local Assistance Plan (LAP) by July 1, 2007, and fully implement the LAP by December 31, 2007. The City adopted and implemented its LAP (Attachment 3), and CalRecycle staff monitored the City's progress to ensure full LAP implementation by December 31, 2007.

Although the City implemented all of the LAP programs by December 31, 2007, the City's commercial program became less effective after this date. As a result, the City revised its commercial waste routing multiple times.

On May 21, 2010, the City requested a time extension to carry out a significant improvement in its commercial waste routing, and on June 17, 2010, CalRecycle's Deputy Director, Waste Permitting, Compliance, and Mitigation Division, granted the City's request to extend the deadline for full Local Assistance Plan implementation to September 30, 2010. This approval also extended the City's monitoring period through September 30, 2011.

As required, CalRecycle staff continued oversight monitoring to evaluate and determine program effectiveness. This monitoring continued through February 2012, when CalRecycle staff made its final compliance verification site visit.

Existing Jurisdiction Conditions:

The City of Downey was incorporated in 1956. The City is an urban community in the southeastern section of Los Angeles County. The City encompasses approximately 12 square miles and is located approximately 10 miles southeast of downtown Los Angeles. According to Department of Finance estimates, in 2010 the City had a population of 111,850.

Key Jurisdiction Conditions				
Calculated Disposal Rate (Lbs/person/day)		Waste Stream Data		
<i>50% per Capita Disposal Target (2006)</i>	<i>2010</i>	<i>Population (2010)</i>	<i>Non-Residential Waste Stream Percentage</i>	<i>Residential Waste Stream Percentage</i>
6.2	4.1	111,850	40	60

Staff's Assessment

After analyzing the City's reports and monitoring the City's program development, CalRecycle staff believes that the complete implementation of both the LAP and Source Reduction and Recycling Element (SRRE) programs has allowed the City to effectively achieve all reasonable and feasible efforts. The complete program listing (Attachment 4) reflects the 30 programs that the City has in place. The City staff intends to continue to implement, monitor, and improve all programs.

The following table summarizes the City's progress to date for each LAP program:

Local Assistance Plan Program Requirements	Progress to Date
<i>Commercial Diversion Program</i>	<p><i>Implemented.</i></p> <p>To achieve greater diversion from the City's "dry" garbage, the City's hauler rerouted its trucks to collect "wet" garbage loads and "dry" garbage loads. More recyclables can be recovered from a "dry" load than a "wet" load. The hauler has reconfigured its routing multiple times since the initial rerouting in 2007 to address issues identified by City staff and CalRecycle staff. During staff's most recent site visit, the hauler reported that it continually refines its routing, based on feedback from its drivers. This summary highlights some of the hauler's more significant instances of rerouting.</p> <p>On March 4, 2009, CalRecycle staff learned that the Downey Area Recycling and Transfer Facility (DART), the facility that</p>

	<p>was processing most of the City's commercial materials, had significantly reduced its commercial waste processing, ceasing to use its mixed waste belt to sort materials due to the economic downturn of the commodities market. As a result, on August 3, 2009, the City directed its hauler to take its "dry" loads to a facility that would process these loads more thoroughly. The hauler began taking these loads to Paramount Resource Recycling (PRR).</p> <p>To improve the commercial program's effectiveness, on May 21, 2010, the City requested a Time Extension. This request outlined the City's plan to reroute significant amounts of commercial and roll-off waste to PRR instead of DART. On June 22, 2010, the City approved rate increases to support this rerouting, and on July 1, 2010, this new rerouting went into effect. Since then, staff has conducted site visits to evaluate these modified routes. During staff's latest site visit in February 2012, the routing was generally effective. The "wet" loads were belt-processed at DART, and "dry" loads were belt-processed at PRR to recover materials.</p> <p>There remains room for improvement. For example, some "wet" loads contained some cardboard. Also, many "dry" loads contained greenwaste, though it was not enough to significantly contaminate the available recyclables. Furthermore, the City's hauler often collects its commercial recycling bins with the "dry" loads, saying that the commercial recycling bins do not contain enough material for a separate load. While these factors are not ideal, they do not have a significant impact on the program's overall effectiveness.</p>
<i>Construction and Demolition (C&D) Diversion Program</i>	<p><i>Implemented.</i></p> <p>On August 14, 2007, the City Council adopted the City's C&D ordinance, and on September 8, 2009, the City Council amended the ordinance to include more projects.</p> <p>With some exceptions, this ordinance requires that covered projects divert 100 percent of all inert debris and at least 50 percent of all other debris. Covered projects include the following:</p> <ul style="list-style-type: none">• Projects with a total valuation of \$75,000 or more• All demolition-only projects with a valuation of \$75,000 or more• Demolition projects, regardless of valuation, that demolish 500 square feet or more from existing structures

	<ul style="list-style-type: none">• All City-sponsored projects <p>The City requires a deposit on all construction and demolition project permits pulled, and the City returns the full deposit after reviewing applicants' receipts to confirm that the appropriate diversion occurred. Alternately, if the appropriate diversion did not occur, the City reduces the amount of the deposit returned in proportion to the amount not diverted, and uses this money to promote recycling.</p> <p>The City began to enforce its C&D ordinance in the first quarter of 2008, after finalizing materials to distribute to residents and contractors. Staff has confirmed this via plainclothes visits to City Hall. From March 2008 through February 2012, 547 projects were completed under this ordinance. The projects that the City's franchise hauler handled had an average recovery rate of over 60 percent from 2009 through 2011.</p>
<i>Quarterly and Annual Reporting</i>	<i>Implemented.</i> The City has maintained its Compliance Documentation Binder and has submitted all required quarterly and annual reports.

Overview of the Options CalRecycle has Regarding Compliance Orders

Determination of Completion

Once a jurisdiction has reported full implementation of all of the conditions and terms of a Compliance Order, CalRecycle has the following general responsibilities regarding the consideration of the completion of the Compliance Order:

CalRecycle shall hold a public hearing to determine whether or not the jurisdiction has fully implemented the Compliance Order (PRC Section 41850(a)). This includes, but is not limited to, determining if the jurisdiction has done the following:

- Made a good faith effort to fully implement all of its Local Assistance Plan and Source Reduction and Recycling Element selected programs (PRC Section 41850(b)); and
- Met the diversion requirements of PRC Section 41780 (PRC Section 41850(b)).

Penalty Structure

CalRecycle may impose fines only after a jurisdiction fails to adhere to the Compliance Order and/or schedule requirements. Fines may be levied according to the cause of failure to adequately implement a Source Reduction and Recycling Element and/or Household

Hazardous Waste Element; staff would recommend to CalRecycle an appropriate level of penalty based on the criteria listed below.

1. "Serious" failure includes a jurisdiction that fails to implement its Source Reduction and Recycling Element or Household Hazardous Waste Element without reason or justification. The fine recommended for this type of violation would be no less than \$5,000 and up to the maximum \$10,000 per day.
2. "Moderate" failure includes a jurisdiction that fails to implement its Source Reduction and Recycling Element or Household Hazardous Waste Element due to mitigating circumstances that have no bearing on natural disasters, budgetary constraints and work stoppages. Mitigating circumstances would be determined on a case-by-case basis by CalRecycle. The fine recommended for this type of violation would be \$1,000 to \$5,000 per day.
3. "Minor" failure includes a jurisdiction that has implemented some or all programs, but has failed to meet the diversion requirements to some extent. Fines will be based on information provided by the jurisdiction and on statutory relief considerations. Fines, if determined to be appropriate, will be decided by CalRecycle on a case-by-case basis, and would range from \$1 per day up to \$1,000 per day.

A jurisdiction may only be fined after failing to adhere to the Compliance Order and schedule. Fines will continue until a jurisdiction has implemented the programs as outlined in the Compliance Order.

Notwithstanding the above penalty structure, if CalRecycle determines, on a case-by-case basis, that a jurisdiction demonstrates that it has made a good faith effort to implement its Source Reduction and Recycling Element and/or Household Hazardous Waste Element, including achieving the diversion requirements, CalRecycle shall not impose penalties.

VII. ATTACHMENTS

1. Compliance Order IWMA BR07-03
2. Site Visit Photo Report
3. Local Assistance Plan
4. City of Downey Waste Diversion Program and Diversion Rate Summary
5. Request for Action for the Removal of Compliance Order IWMA BR07-03

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

Program Staff: Michael Chen
Legal Staff: Tamar Dyson

Phone: (916) 327-8824
Phone: (916) 341-6083